

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

Mary E. Luster,

Plaintiff,

v.

Michael J. Astrue,  
Commissioner of Social Security,

Defendant.

C/A No. 6:07-3344-GRA

ORDER

(Written Opinion)

Plaintiff's attorney petitions this Court for an award of attorney's fees in the above-captioned case pursuant to the Social Security Act, 42 U.S.C. § 406(b). Plaintiff's attorney seeks \$3,291.25 in attorney's fees, which, in addition to fees previously approved, amounts to twenty-five percent of the past-due benefits withheld by the Social Security Administration for attorney's fees. The government has no objections to a reasonable attorney fees amount.

In the 1985 amendments to the Equal Access to Justice Act (EAJA), Congress specified that, if a claimant's attorney received attorney fees under both the EAJA and section 406(b), the claimant's attorney must "refun[d] to the claimant the amount of the smaller fee." *Gisbrecht v. Barnhart*, 535 U.S. 789, 795-98 (2002) (citing Pub.L. 99-80 § 3, 99 Stat. 186 (Aug. 5, 1985)). Plaintiff's attorney was awarded fees under the EAJA by order of this Court on February 10, 2009. Therefore, Plaintiff's attorney must refund to Plaintiff the lesser of the two fees.

After a review of the record and Plaintiff's attorney's petition, this Court finds

that an award of attorney's fees in the amount requested is appropriate and reasonable.

IT IS THEREFORE ORDERED that Defendant pay Plaintiff's attorney three thousand two hundred and ninety-one dollars and twenty-five cents (\$3,291.25) out of Plaintiff's award.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "G. Ross Anderson, Jr.", written over a horizontal line.

G. Ross Anderson, Jr.  
Senior United States District Judge

Anderson, South Carolina  
March 16, 2010